

MONTGOMERY COUNTY, STATE OF MARYLAND

Waters Landing Association, Inc.
20000 Farther Hurley Boulevard
Germantown, MD 20874

Complainant

vs.

Ana Berrones
46 White Church Court
Germantown, MD 20874

Respondent

Panel Chair Memorandum By: John F. McCabe, Jr. :

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: COMMISSION ON COMMON
: OWNERSHIP COMMUNITIES
:
: Case No. 03-668-G
:
: Panel Hearing Date: February 23, 2005
: Decision Issued: June 14, 2005

MEMORANDUM DECISION AND ORDER

The above entitled case came before a Hearing Panel of the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing on February 23, 2005, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(f), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended. The duly appointed Hearing Panel considered the testimony and evidence of record, and finds, determines and orders as follows:

BACKGROUND

This is a complaint filed on September 24, 2003 by a homeowners association against a unit owner in the association. The Association seeks an order requiring the unit owner to correct a number of maintenance items with respect to her unit. The unit is a townhouse in a row of townhouses.

The Respondent unit owner did not file an answer to the complaint. The record shows that the Respondent unit owner received a notice of the February 23, 2005 hearing by certified mail. There is a return receipt in the record dated January 15, 2005, for a letter dated January 14, 2005. The record also shows that the Respondent Unit Owner was sent notice of the hearing by ordinary mail on January 18, 2005. There is no indication in the record that the January 18, 2005 letter was returned unclaimed. Nevertheless, Respondent did not appear at the scheduled hearing. The hearing commenced shortly after 6:30 p.m. and ended at approximately 7:45 p.m.

FINDINGS OF FACT

1. The Complainant Waters Landing Association, Inc. (the "Association") is a homeowners association within the meaning of the Maryland Homeowners Association Act, Title 11B, Real Property, Annotated Code of Maryland.

2. The Respondent Ana Berrones, is a unit owner of a townhouse within the Association. Her address is 46 White Church Court, Germantown, Maryland 20874.

3. Over a period of time beginning in 1997 and continuing to the present, the Association notified Respondent in writing numerous times regarding maintenance violations. The Association also conducted a hearing before its Architectural and Environmental Control Committee on August 27, 2003 at 7:00 p.m. The hearing was continued to that date from July 30, 2003 at the request of the Respondent. However the Respondent did not attend the August 27, 2003 hearing.

4. The maintenance violations which the Association seeks to have the unit owner correct are the following:

- A. Remove and replace the cracked and peeling paint on the front of the townhouse wherever it appears;

- B. Remove and replace rotted wood wherever it appears, including but not limited to areas of trim, areas along the ground level of the front of the townhouse and areas around the front door of the townhouse;
- C. Replace the missing exhaust vent covers;
- D. Replace the lattice work along the front fence with a style of lattice work consistent with what presently appears in the community;
- E. Replace the broken window screens on the front windows of the townhouse or remove all screens;
- F. Replace either the upper or lower shutters on the front windows so that the same style of shutters is on all windows;
- G. Replace the broken blinds in the upper windows and provide the same type of blinds in all of the windows, either all horizontal or all vertical, or remove all blinds;
- H. Clean up the trash and debris in the front yard including but not limited to empty buckets, pails and tires in the front yard and remove the grill to a distance away from the townhouse in accordance with the requirements of Montgomery County Codes, when it is in use;
- I. In addition, the Panel notes that the vent adjacent to the front door is rusted. The Association stated at the hearing that the unit owner had not been cited for the condition of this vent but that the vent should be repainted or replaced.

5. The Association presented a series of eight (8) photographs, which were admitted into evidence, which illustrate all of the above maintenance violations.

6. The Respondent unit owner did not appear at the February 23, 2005 hearing and has not answered any of the claims of the Association.

CONCLUSIONS OF LAW

1. The Declaration of Covenants of the Association, which are part of the record, Commission Exhibit No. 1, authorize the Association to adopt and enforce rules and regulations regarding maintenance of property. Article VII, Section 7 sets forth the general authority of the

Association regarding a number of matters including "protection of the environment". Article IX, Section 1 provides that the Association has the right, but not the obligation, to perform necessary exterior maintenance on properties if the owner of the property does not do so. The right to perform exterior maintenance necessarily includes within its scope the authority to adopt rules and regulations regarding the requirements for exterior maintenance binding upon the unit owners.

2. The maintenance violations enumerated in Finding of Fact No. 4 above are violations of the Covenants, Rules and Regulations of Waters Landing Association, Inc. except that there appears to be no authority for the Complainant to require identical blinds in all windows.

3. The Respondent unit owner has received ample notice of the pendency of these violations, has received an opportunity to appear before the Association regarding these violations, and has received ample notice of the February 23, 2005 hearing before this Panel. The Respondent's election not to participate will not preclude the Panel from granting relief to the Association.

4. The Association has more than one option with regard to the pending violations. It may exercise self-help pursuant to Article IX of its Declaration, or it may obtain an order from this Commission ordering correction of the violations.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law it is as of the decision issued date set forth on the first page of this Order

ORDERED:

1. The Respondent unit owner Ana Berrones is ordered to correct all of the maintenance violations set forth in the Findings of Fact No. 4 above within sixty (60) days from the decision issued date of this Order. With respect to the blinds, Findings of Fact No. 4.g., the Respondent may either repair or replace the existing blinds, or remove all blinds, but the blinds do not need to be of an identical style, only the same color in all windows.

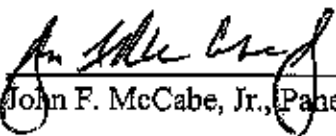
2. Waters Landing Association, Inc. may if it elects to do so, in its sole discretion, enter upon the Respondent's property at 46 White Church Court, Germantown, MD 20874, correct all of the violations enumerated in Findings of Fact No. 4, and charge the cost thereof to the Respondent in accordance with Article IX, Section 1 of the Association's Declaration of Covenants. If the Association elects to take this course of action, it shall give due notice to the Respondent Unit Owner. The Respondent is ordered to allow the Association, its agents, contractors and employees, to enter upon her property at a reasonable time to make the necessary repairs, and is ordered not to hinder those efforts.

3. This decision shall not be construed as requiring the Association to exercise the remedy of self-help, nor shall the Association's decision not to do so in any way hinder the implementation of this Order. In particular, if Respondent does not correct the enumerated violations within the time set forth in Paragraph 1 above, then the failure to do so shall constitute a Class A civil violation in accordance with Montgomery County Code and shall be enforceable as

such.

Panel Members Andrew Oxendine and Eric Smith concurred in the foregoing.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days of this Order, pursuant to the Maryland Rules of Procedures governing administrative appeals.


John F. McCabe, Jr., Panel Chair